

RESOLUTION 2005-24

A RESOLUTION GRANTING THE EXECUTIVE DIRECTOR AUTHORITY TO WAIVE REQUIREMENTS AND PROCEDURES IN 68 IAC 5-3-2, APPROVAL OF DEBT TRANSACTIONS

The Indiana Gaming Commission ("Commission") adopts the following resolution pursuant to the authority granted to it under IC 4-33 and pursuant to 68 IAC 1-2-6.

The Commission has considered the following factors:

1. 68 IAC 5-3-1(b) states: "A riverboat licensee . . . may enter into debt transactions that total one million dollars (\$1,000,000.00) or more only in accordance with this rule."
2. 68 IAC 5-3-2(a) states: "A riverboat licensee . . . may not enter into any debt transaction without receiving the approval of the commission."
3. Pursuant to IC 4-33-4-21 and 68 IAC 5-3-2, the Commission must review proposed debt transactions to ensure that the riverboat owner's license is not leased or hypothecated, or that money is not borrowed or loaned against the riverboat owner's license.
4. Pursuant to 68 IAC 5-3-2(b), the regular procedure for acquiring commission approval of a debt transaction requires Commission consideration of the debt transaction at two consecutive Commission business meetings (i.e., the "two meeting rule").
5. Prior to the Commission's April 21, 2005 business meeting, Commission staff received requests from Grand Victoria Casino & Resort, LP; Aztar Indiana Gaming Company, LLC; and Boyd Gaming Corporation (the parent company of Blue Chip Casino, LLC), seeking Commission approval of three separate debt transactions which the entities wish to execute. In their correspondence, each licensee also requested a waiver of the two meeting rule.
6. 68 IAC 5-3-6 provides the executive director or the Commission with the ability to "waive, alter, or restrict any requirement or procedure set forth in [68 IAC 5-3]."
7. In Resolution 2003-2, the Commission explicitly empowered the executive director to waive Commission approval of 68 IAC 5-3 debt transactions (and thereby the two meeting rule) whenever the Commission's chair and certified public accountant had discussed the proposed debt transaction with the executive director and agreed with the executive director that such a waiver was appropriate.
8. As of April 21, 2005, the Commission seat designated for a certified public accountant pursuant to IC 4-33-3-2(d) is vacant.
9. The three debt transactions currently before the Commission have not been discussed with or reviewed by any certified public accountant who is authorized by the Commission to do so. Absent such a discussion or review, the Commission shall not waive the requirements or procedures of 68 IAC 5-3-2.

10. In order to clarify the ability of the executive director to waive the requirements or procedures of 68 IAC 5-3-2 during a time period when the Commission's certified public accountant seat is vacant, the Commission wishes to authorize the executive director to grant a waiver of 68 IAC 5-3-2 by acting in accordance with the following procedure: (a) the executive director or the executive director's designee must discuss the proposed debt transaction with, and make material documentation available for review by, the Commission chair and the Commission's outside financial analyst, Dr. Charlene Sullivan; (b) after receiving input from the Dr. Sullivan, and upon agreement between the executive director and the Commission chair, the executive director may waive 68 IAC 5-3-2 by notifying the requesting riverboat licensee in writing; and (c) the executive director shall report such waiver to the Commission at the next business meeting held under 68 IAC 2-1-5 for final ratification by the Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE INDIANA GAMING COMMISSION, THAT THE FOLLOWING RESOLUTION IS ADOPTED:

SECTION 1: SCOPE

This resolution applies to all riverboat licensees, riverboat license applicants, and affiliates thereof.

SECTION 2: DEFINITIONS

The definitions set forth in IC 4-33-2 and 68 IAC apply to this resolution.

SECTION 3: GRANT OF AUTHORITY TO THE EXECUTIVE DIRECTOR

The executive director is hereby granted the authority to act in accordance with the procedure identified in paragraph 10 of this Resolution 2005-24 in order to waive the requirements or procedures of 68 IAC 5-3-2, and to report to the commission at the next business meeting held under 68 IAC 2-1-5 for final ratification of same waiver.

SECTION 4: EFFECTIVE DATE

This resolution is effective immediately.

SECTION 5: EXPIRATION DATE

This resolution shall expire when the Commission seat designated for a certified public accountant pursuant to IC 4-33-3-2(d), is filled.

ADOPTED, THIS THE 21st DAY OF APRIL, 2005.

THE INDIANA GAMING COMMISSION:

Harold Calloway, Chair

ATTEST:

Secretary